

TITLE 16, CALIFORNIA CODE OF REGULATIONS, DIVISIONS 5 & 29

BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS

NOTICE IS HEREBY GIVEN that the Board for Professional Engineers, Land Surveyors, and Geologists (Board) is proposing to take the action described in the Informative Digest. The Board does not intend to hold a hearing in this matter. If an interested party wishes that a hearing be held, he or she must make the request in writing to the Board no later than 5 p.m. on April 1, 2013. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text.

With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on April 15, 2013.

Authority and Reference: Pursuant to the authority vested by Sections 6716, 7818, and 8710 of the Business and Professions Code, and to implement, interpret, or make specific Sections 123, 123.5, 496, and 7844 of said Code, the Board is considering changes to Divisions 5 and 29 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

It is the intent of the Board to ensure that its laws are clear, concise, efficient, and necessary. To that extent, staff is proposing regulation amendments to the enforcement components of the Professional Engineers Act, Professional Land Surveyors' Act, and Geologist and Geophysicist Act so that they are all similar in content and form. These modifications would make it easier for the consumers of California and the Board's applicants, licensees, and certificate holders to comprehend and follow the laws and regulations. It would also provide consistency with the Board's current procedures and maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

Since October 2011, the Board has utilized computer-based testing (CBT) centers and the National Council of Examiners for Engineering and Surveying (NCEES) for

administration of its licensure examinations. As such, Board staff is not in attendance for many of the examinations and must rely on the CBT centers and NCEES to advise the Board of any incidents that may occur during an examination. Those who are not taking their examinations properly or fairly may be committing examination subversion.

AMEND SECTIONS 442 AND 3035 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS.

Examination subversion, as detailed in Section 442 of Title 16 of the California Code of Regulations (CCR), can vary from severe to minor violations. Since the Board is not always present to witness the subversion as it happens, the Board must analyze the matter according to the evidence provided to it by the administrator of the examination. In some subversion incidents, voidance of the examination is not an appropriate action in response to the violation. The Board needs to assess the incident that has taken place and determine the appropriate action. As such, Section 442 needs to be amended to allow the Board to have the discretion to determine the appropriate course of action in response to the subversion action.

Similarly, 16 CCR Section 3035 is being amended to match Section 442 to provide consistency among all of the regulations under the purview of the Board. Section 3035 is also being amended to provide the detail and specifics noted in Section 442. This amendment would put into writing in Section 3035 the detail and specifics the Board currently utilizes for its geology and geophysics examinations.

This proposed rulemaking action will not task the licensees or applicants with any additional work and will not require the licensee to expend any additional money to comply.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

The purpose and benefit of this proposed regulatory action is to ensure that the examinations are being administered fairly and that all applicants are completing their examinations using their own knowledge and experience. These amendments will help to maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Board has evaluated this proposed regulatory action and it is neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

This proposed regulatory action does not result in a fiscal impact to public or state agencies.

Nondiscretionary Costs/Savings to Local Agencies:

This proposed regulatory action does not result in nondiscretionary costs or savings to local agencies.

Local Mandate:

This proposed regulatory action does not impose a mandate on local agencies or school districts.

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Requires Reimbursement:

None

Business Impact:

The Board has made an initial determination that this proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Board has determined that this proposed regulatory action will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs:

None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The proposed regulations pertain to examination subversion.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and the State's government:

The purpose and benefit of this proposed regulatory action is to ensure that the examinations are being administered fairly and that all applicants are completing their examinations using their own knowledge and experience. These amendments will help to maintain the Board's mission to safeguard the life, health, property, and welfare of the public.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board at 2535 Capitol Oaks Drive, Suite 300, Sacramento, California 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Larry Kereszt
Address: 2535 Capitol Oaks Drive, Suite 300
Sacramento, CA 95833
Telephone No.: (916) 263-2240
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E-Mail Address: Larry.Kereszt@dca.ca.gov

The backup contact person is:

Name: Erin LaPerle
Address: 2535 Capitol Oaks Drive, Suite 300
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WEBSITE ACCESS: Materials regarding this proposal can be found at
www.bpelsq.ca.gov.